

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION

In Re:

Addie Mae Simmons  
Debtors

\* Bankruptcy Case #15-10291

\*

\*

Addie Mae Simmons  
Plaintiff

\* Chapter 13

\*

\*

v.

WILMINGTON SAVINGS FUND SOCIETY,  
FSB d/b/a CHRISTIANA TRUST  
AS TRUSTEE FOR PNPMS TRUST II

\*

\*

\* Adv. Proc. No. 21-01001

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION  
TO DISMISS AND FOR SANCTIONS**

Plaintiff, ADDIE MAE SIMMONS, Debtor in the underlying bankruptcy case, comes now through her attorney and opposes Defendant's Motion for Contempt and Sanctions. In support of this Motion Plaintiff is Contemporaneously filing her brief, containing argument and citation to authority and shows the Court as follows:

1. Plaintiff filed the instant Adversary on January 21, 2021. Defendant filed its Answer on March 23, 2021. A Pre-Trial Conference was held on March 18, 2021, at which time the Court entered a Scheduling Order setting a Status Conference and Rule 16 Deadlines.
2. Debtor's discharge was entered on December 16, 2020, and the Trustee's response to the Final report was due January 22, 2021. This adversary was required to be filed before the underlying bankruptcy case was to be completed and closed on or about January 23, 2021.

3. The under-signed attorney is filing a Petition for Administration of Plaintiff's estate for her daughter Adrian Leeks. The daughter, as administrator, will be substituted as the appropriate party to the lawsuit and to complete discovery.
4. Debtor's confirmed plan clearly shows that the second mortgage of Plaintiff was subject to lien stripping special provisions for the duration of the plan, being allocated zero payments. Only within the last few years have the Bankruptcy Courts required a separate adversary to accomplish lien stripping in order to ensure notice. In this case the creditor's predecessor had clear notice, filed a claim noting the debt as uncollectable and charged off, and acquiesced in debtor's treatment.
5. The mere death of the debtor does not change the status of the confirmed plan, and the adversary relates to real estate to be inherited by Debtor's family.
6. The Court may take judicial notice of the plan, schedules, and claims in order to determine factual issues regarding the case, and debtor's own testimony may be gleaned from her schedules which were signed under oath at the time the case was filed. Debtor's current participation is not absolutely essential to prosecution or defense of the case. Debtor was close to her daughter who has lived on this property at issue, and she would be the appropriate party to succeed debtor in this case. All of her living brothers and sisters have consented to the administration. One brother recently died, and his heirs who are minors, have signed an acknowledgment by the natural guardian their mother, and ex-wife of Mrs. Simmons' deceased son.
7. Nearly all issues involved in the adversary are based on facts and valuation in existence at the time the case was filed and not after debtor passed away. The adversary was approved and requested by Debtor before she passed away.

WHEREFORE, Plaintiff requests that the Court consider Plaintiff's brief filed contemporaneously herewith, deny Defendant's motion to Dismiss and for Sanctions and continue the case to the next hearing date.

Respectfully submitted, this 4<sup>th</sup> day of August, 2021.

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**CERTIFICATE OF SERVICE**

I, Shelba D. Sellers, Sellers & Mitchell, P.C., P.O. Box 1157, Thomasville, Georgia 31799, hereby certify that on this date, I electronically filed the within and foregoing **Response to Motion to Dismiss and For Sanctions** with the Clerk of the Court using the CM/ECF system. I also certify that Attorney for Defendant will be served on this date by electronic means of the Court.

Respectfully submitted, this 4<sup>th</sup> day of August, 2021.

/s/ Shelba D. Sellers

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*Attorney for Plaintiff*